

AR's:  
CDC

1 insurance companies relating to asbestos  
2 PI claims, are they, too, enjoined and  
3 channelled pursuant to the asbestos PI  
4 channelling injunction?

5 A. Yes. The Libby claimants  
6 are no different from any other asbestos  
7 personal injury claimant as far as this  
8 injunction is drafted.

9 Q. Okay. And the claims that  
10 the settled asbestos insurance companies  
11 have, contractual or otherwise, that  
12 arise from asbestos PI claims against the  
13 Debtors, Non-Debtor affiliates, Sealed  
14 Air, the Sealed Air indemnified parties,  
15 and the Fresenius indemnified parties are  
16 all enjoined under this asbestos PI  
17 channelling injunction as well, correct?

18 A. I refuse to accept the  
19 proposition that there can be any such  
20 claims, because the claims against you  
21 that would give rise to those indemnity  
22 claims are all enjoined, and so you  
23 are -- it's a catch-22. If the claims  
24 could be asserted against you, it would

1 be because there is no 524(g) injunction.  
2 If there is no 524(g)  
3 injunction, there is no Trust. There is  
4 no -- so the Trust hasn't -- there is  
5 nothing -- there is no place to channel  
6 them. If there is no 524(g) channelling  
7 injunction, this Plan doesn't exist. You  
8 are back to square one. You got  
9 indemnity claims against Grace.

10 Q. But, Mr. Lockwood, just a  
11 few moments ago, you put some  
12 qualifications on the scope of the  
13 channelling injunction as applied to the  
14 Scotts action.

15 A. Yeah, because those claims  
16 were claims to be an additional insured,  
17 and the asbestos personal injury -- you  
18 can be an additional insured with respect  
19 to asbestos claims and with respect to  
20 non-asbestos claims.

21 The channelling injunction  
22 deals with asbestos claims. The claims  
23 you have recited for BNSF and Libby are  
24 asbestos claims. There is no dispute to

1 Q. I think we are talking past  
2 each other. Let's just move on.

3 Let's go to Section 8.4,  
4 which is the Asbestos Insurance Entity  
5 Injunction.

6 A. I have it.

7 Q. What is the purpose of this  
8 injunction?

9 A. The purpose of this  
10 injunction is --

11 MS. HARDING: Object to  
12 form.

13 THE WITNESS: Excuse me?

14 MS. HARDING: I just object  
15 to form.

16 THE WITNESS: From the ACC's  
17 perspective, the purpose of this  
18 injunction is to protect the  
19 insurance assets being transferred  
20 to the Trust from being  
21 intercepted, if you will, or --

22 MR. FINCH: Looted.

23 THE WITNESS: -- looted or  
24 pillaged, or whatever, by claims



1 from claimants, direct action type  
2 claims.

3 This is intended to be a  
4 communal asset for the benefit of  
5 the present of future claimants in  
6 the Trust, and allowing individual  
7 claimants to go around the back  
8 door, if you will, and bring  
9 claims against the insurers whose  
10 coverage was being assigned for  
11 the communal benefit of the Trust  
12 would be inequitable, in our view,  
13 and that's the purpose of this  
14 injunction.

15 BY MR. BROWN:

16 Q. Okay. You are aware that  
17 Scotts and BNSF have asserted certain  
18 rights under certain asbestos insurance  
19 policies, correct?

20 A. Correct.

21 Q. Does this injunction enjoin  
22 those two entities from pursuing coverage  
23 for asbestos-related claims under the  
24 settled asbestos insurance policies or

AR'S  
OBJ:  
CLC  
LF  
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1 frankly under any asbestos insurance  
2 policies?

3 MR. FINCH: Object to form,  
4 compound.

5 THE WITNESS: Not if what we  
6 are suing for is not based upon or  
7 arising out of an asbestos PI  
8 claim against the Debtors or any  
9 asbestos insurance rights.

10 If they are asserting -- you  
11 have to look at the definition of  
12 asbestos PI claim; you have to  
13 look at the definition of asbestos  
14 insurance rights.

15 The asbestos insurance  
16 rights are the rights of the  
17 Debtor. They are not the rights  
18 of Scotts or BNSF. So you have --  
19 and asbestos PI claims are  
20 personal injury claims arising out  
21 of exposure to Grace products.

22 So it would depend upon,  
23 again, the type of claim that was  
24 being asserted by Scotts or BNSF.

AR's  
OBJ:  
CLC  
LF  
CFS

→



AK's  
OBJ:  
CLC  
LF  
CFS

1 BNSF, for example, purports to  
2 have, at least in one instance, I  
3 think it's Royal, claims issued  
4 directly to it by Royal that were  
5 somehow procured by Grace but  
6 which don't cover Grace. I don't  
7 believe that this injunction would  
8 preclude suits by BNSF on that  
9 sort of insurance claim.

10 BY MR. BROWN:

11 Q. Would the prior injunction  
12 enjoin that type of claim?

13 A. The asbestos personal  
14 injury?

15 Q. Yes.

16 A. No, because those policies  
17 are not within the definition -- they are  
18 not covered in Exhibit-5, and so Royal  
19 wouldn't be an asbestos-protected party  
20 with respect to those policies.

21 We are now talking about  
22 non-settled coverage here, aren't we?  
23 Wasn't that what your question was?

24 Q. I don't know. This was your

1 form, and speculation and legal  
2 conclusion.

3 MR. FINCH: Same set of  
4 objections.

5 THE WITNESS: Well,  
6 moreover, when you say it doesn't  
7 affect the other property  
8 interest, I don't know the answer  
9 to that. I am not competent to  
10 answer that question, frankly. I  
11 am already skating on the edge of  
12 my competence, and I think that  
13 one takes me past it.

14 BY MS. COBB:

15 Q. Okay. Peter, I would like  
16 to ask you a few questions about the  
17 non-settled insurance companies as  
18 defined in the Plan.

19 A. Okay.

20 Q. What contributions have the  
21 non-settled insurance companies made to  
22 the Plan?

23 MR. FINCH: Objection, asked  
24 and answered.

1 THE WITNESS: As far as I  
2 know, none.

3 BY MS. COBB:

4 Q. If the non-settled insurance  
5 companies are not making a contribution  
6 to the Plan, would you agree then that  
7 they are not entitled to 524(g)  
8 protection?

9 MS. HARDING: Object to  
10 form.

11 THE WITNESS: Well, if they  
12 are not making a contribution and  
13 nobody else is making a  
14 contribution on their behalf, then  
15 I would agree that under the  
16 statute, it would be hard to see  
17 how they would be entitled to  
18 protection under Section 524(g).

19 BY MS. COBB:

20 Q. Are the non-settled  
21 insurance companies getting a benefit  
22 from the asbestos insurance entity  
23 injunction to the extent that the claims  
24 against them are enjoined by that



1           it, because the state action you  
2           are describing is an action  
3           against an insurance company, but  
4           you seem to be contemplating some  
5           tort claim against somebody else.

6   BY MS. COBB:

7           Q.       Beyond the asbestos  
8           insurance entity injunction, are there  
9           any other protections in the Plan for the  
10          non-settling insurance company?

11                   MR. FINCH: Object to form.

12                   MS. HARDING: Object to the  
13           form.

14                   THE WITNESS: Not that I am  
15           aware of.

16   BY MS. COBB:

17           Q.       What is the consideration  
18           given by the non-settling insurance  
19           companies for the Section 105 asbestos  
20           insurance entity injunction protection?

21           A.       I believe I already answered  
22           that, and the answer was none. That  
23           injunction is for the benefit of the  
24           Trust and its beneficiaries and not for

1 the benefit of the asbestos insurance  
2 entity even though they may, as a prior  
3 answer of mine stated, receive some  
4 collateral benefit from it in their  
5 minds.

6 Q. I just have a couple of  
7 questions about the Trust Distribution  
8 Procedures. And I apologize since I am  
9 attending by phone, can you please remind  
10 me what the ACC exhibit number is?

11 MR. FINCH: 11.

12 MS. COBB: I am sorry.

13 What?

14 MR. FINCH: It's ACC  
15 Exhibit-11.

16 MS. COBB: It is ACC  
17 Exhibit-11, for the record.

18 THE WITNESS: And it's Plan  
19 Exhibit-4. I have that exhibit,  
20 Tiffany.

21 BY MS. COBB:

22 Q. You do. Okay.

23 Looking at ACC Exhibit-11,  
24 can you tell me what happens to common

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11  
:   
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
:   
: (Jointly  
Debtors : Administered)

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Monday, May 4, 2009

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Continuation of oral

deposition of PETER VAN N. LOCKWOOD,  
ESQUIRE, taken pursuant to notice, was  
held at the offices of CAPLIN & DRYSDALE,  
One Thomas Circle N.W., Suite 1100,  
Washington, DC 20005, commencing at  
12:05 p.m., on the above date, before  
Lori A. Zabielski, a Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Pennsylvania.

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